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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. ———

UNITED STATES OF AMERICA, APPELLANT

v.

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE, BARTON AND MILTON RAY WOODWARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the district court (App. A, *infra*, pp. 1a–10a) is reported at 335 F. Supp. 641.

JURISDICTION

The judgment of the district court (App. B, *infra*, p. 11a) was entered on January 6, 1972. A notice of appeal to this Court was filed on January 14, 1972. This Court has jurisdiction of this direct appeal under 18 U.S.C. 3731 (1964 ed.), since the district court's dismissal of the indictment was founded upon its construction of the underlying statute. See *United States* v. *Interna-*

tional Minerals and Chemical Corporation, 402 U.S. 558; *United States* v. *Fabrizio,* 385 U.S. 263.[1]

QUESTION PRESENTED

Whether, during the course of a lawful strike against an employer engaged in interstate commerce, an agreement by certain union officers and members to commit unlawful acts of violence, for the purpose of coercing the employer to consent to higher wages and other union contract demands, constitutes a violation of the Hobbs Act, 18 U.S.C. 1951.

STATUTE INVOLVED

18 U.S.C. 1951 provides in pertinent part:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> (b) As used in this section—
>
> * * * * *
>
> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual

[1] The 1971 amendment to the Criminal Appeals Act (18 U.S.C. 3731), providing that all appeals from dismissals of indictments or informations must be taken to the courts of appeals, 84 Stat. 1890, is not applicable to this case because the amendment is effective only as to cases begun in the district courts after its effective date, January 2, 1971. See *United States* v. *Jorn,* 400 U.S. 470, 474 n. 1, 477–478 n. 6.

> or threatened force, violence, or fear, or under color of official right.
>
> (3) The term "commerce" means * * * all commerce between any point in a State * * * and any point outside thereof * * *.

STATEMENT

On October 15, 1970, a one-count indictment was returned in the Eastern District of Louisiana charging appellees with conspiracy to violate the Hobbs Act by engaging in acts of violence and destruction of property during the course of negotiations for a new collective bargaining agreement between the International Brotherhood of Electrical Workers (IBEW) and Gulf States Utilities Corporation. The indictment alleged that, during the period October 1969 through June 2, 1970, Gulf States Utilities was in the business of furnishing electricity to communities in Louisiana and Texas and was part of an electrical network which served other states. The employees of Gulf States Utilities were represented by Local 2286 of the IBEW. One appellee (Barton) was an officer of this union. During the same period, some of the subcontractors employed by Gulf States Utilities were represented by Local 390 of the IBEW. Two of the appellees (Enmons and Bendo) were officers of this union; the other (Woodward) was a member. The indictment charged that the appellees conspired among themselves and with other unindicted co-conspirators (Pet. App. C, *infra*, p. 1a-4a):

> * * * to obstruct, delay, and affect commerce * * * and the movement in commerce of electrical energy and other articles and commodities by extortion * * * and to commit physical violence to property in furtherance of said plan to obstruct, delay and affect commerce.

> It was part of said conspiracy that the [appellees] and co-conspirators would obtain the property of the Gulf States Utilities Company in the form of wages and other things of value with the consent of the Gulf States Utilities Company, its officers and agents, such consent to be induced by the wrongful use of actual force, violence and fear of economic injury by said [appellees] and co-conspirators, in that [appellees] and the co-conspirators did commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company in order to force said Company to agree to a contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits.

It was also alleged that, in furtherance of the conspiracy, appellees, or persons acting at their direction, committed five acts of violence against the property of Gulf States Utilities including the shooting and sabotage of transformers and the blowing up of a transformer substation.

Appellees filed a motion to dismiss the indictment as not charging an offense under the Hobbs Act. Following a hearing, the motion was granted. The district court stated (App. A, *infra*, p. 8a): "We find no case where a court has gone so far as to hold the type of activity involved here to be a violation of the Hobbs Act." It deemed critical the fact that the wages and other monetary benefits sought to be obtained from the employer were for genuine and desired services. This, the court concluded, distinguished the present case from the situation where "the wages sought by violent

acts are wages to be paid for unneeded or unwanted services, or for no services at all"; in such circumstances, the court recognized that the acts of violence would constitute extortion prohibited by the Hobbs Act (App. A, *infra*, p. 8a).[2] But here it held that, since the acts of violence were in furtherance of a legitimate end, *i.e.*, higher wages for needed and desired services, they were not proscribed by 18 U.S.C. 1951. This conclusion was based on a construction of the statute whereby "neither the wages of bona-fide employees nor the 'right to negotiate employment contracts—without illegal disruption' constitute 'property' as contemplated by the Hobbs Act" (App. A, *infra*, p. 9a).

THE QUESTION IS SUBSTANTIAL

1. The decision below severely curtails the reach of the Hobbs Act by limiting its ban on extortionate conduct directed against employers to situations where wages are sought for superfluous and unwanted labor. This construction finds no support in the language of the Act, is contrary to the legislative history attending the statute, and is inconsistent with the essential holding of this Court in *United States* v. *Green*, 350 U.S. 415.

In *Green*, this Court considered the sufficiency of an indictment under the Hobbs Act charging a local union and its members with acts of extortion against an employer in an attempt to force him to consent to a union contract for certain maintenance work, and thereby obtain " 'his money, in the form of wages to be

[2] The Court cited for this point *United States* v. *Kemble*, 198 F. 2d 889, 891–892 (C.A. 3), certiorari denied, 344 U.S. 893.

paid for imposed, unwanted, superfluous and fictitious services of laborers' " (350 U.S. at 417). Following conviction, the district court granted a motion in arrest of judgment on the ground that the Hobbs Act barred the taking of property from another only when the taking is for the extortioner's personal advantage. This Court reversed.

In reviewing the legislative history of the Hobbs Act, this Court noted in *Green* (as did the district court here) that the Act was a congressional response to this Court's construction of Section 2 of the Federal Anti-Racketeering Act of 1934, 48 Stat. 979, in *United States* v. *Local 807,* 315 U.S. 521. That provision barred, with respect to interstate commerce, exactions of valuable considerations by force, violence or coercion, "not including, however, the payment of wages by a bona-fide employer to a bona-fide employee." The Court held in *Local 807* that this exception covered members of a city truck-drivers' union who had sought by threat of violence to procure wages from their employers for superfluous service. As later observed in *Green* (350 U.S. at 419–420; footnotes omitted):

> * * * In the Hobbs Act, 60 Stat. 420, carried forward as 18 U.S.C. § 1951, which amended the Anti-Racketeering Act, the exclusion clause involved in the *Local 807* decision was dropped. The legislative history makes clear that the new Act was meant to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship. The words were defined to avoid any misunderstanding.

> Title II of the Hobbs Act provides that the provisions of the Act shall not affect the Clayton Act, §§ 6 and 20, 38 Stat. 731, 738; the Norris-La Guardia Act, 47 Stat. 70; the Railway Labor Act, 44 Stat. 577; or the National Labor Relations Act, 49 Stat. 449. There is nothing in any of those Acts, however, that indicates any protection for unions or their officials in attempts to get personal property through threats of force or violence. Those are not legitimate means for improving labor conditions. If the trial court intended * * * to indicate any such labor exception, which we doubt, it was in error.

Although the indictment in *Green* charged the extorting of wages for superfluous and unwanted services, the Court's holding in no way depended on this fact. Rather, the Court interpreted the Hobbs Act as extending to *any* use of extortionate means by union employees or officials to obtain, with consent, property of an employer engaged in interstate commerce. This construction is clearly correct. Nor is there any indication in the legislative history of the Act that Congress intended to limit coverage to an employee's demand for higher wages only if it related to superfluous, as opposed to desired, work. On the contrary, the "legislation is directed at the protection of interstate commerce against injury from extortion" without qualification. *Green, supra,* 350 U.S. at 420. Proponents of the bill that was ultimately adopted stated on the floor of the House (91 Cong. Rec. 11843–11844):

> Mr. SUMNERS of Texas. There is nothing in this bill dealing with persons connected with

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organized labor as such. It is just an attempt on the part of the Committee on the Judiciary to bring in a bill that will prevent this type of robbery in interstate commerce.

Mr. MICHENER. That is all there is to it. The only way labor is involved is that if these offenders belong to the union, and [by way] of robbery or exploitation collect a day's wage—a union wage—they are not exempted from the law solely because they are engaging in a legitimate union activity. * * *

Mr. ROBINSON of Kentucky. Just one other point on that. It does not apply to labor unions alone, it applies to any group of men that are interfering with interstate commerce, whether they be labor unions, farm organizations, or anybody else.

Mr. MICHENER. Why, of course. All are treated alike and no group is given special permission to violate the law. Labor should not ask for such exception.

See also, to the same effect, 91 Cong. Rec. 11919 (remarks of Rep. Hobbs); 91 Cong. Rec. 11909 (remarks of Rep. Vursell); 91 Cong. Rec. 11910–11911 (remarks of Rep. Spinger); 91 Cong. Rec. 11913 (remarks of Rep. Whittington).

In contexts outside the field of labor relations, it has been recognized that the proscription in the Hobbs Act on extortionate conduct applies not merely to the wrongful use of force and threats in seeking illegitimate ends, but also has equal application to actual and threatened force for the purposes of attaining legitimate ends. *E.g., Battaglia* v. *United States,* 383 F.2d 303 (C.A. 9), certiorari denied, 390 U.S. 907 (demand

to use victim's establishment as a location for defendant's pool table); *United States* v. *Tropiano,* 418 F.2d 1069 (C.A. 2), certiorari denied, 397 U.S. 1021 (wrongful use of threats to obtain right to solicit business). Nothing in the statute or its legislative history suggests that any different rule was contemplated for members of labor unions. But that is precisely the effect of the district court's construction of the statutory term "property" to include only wages sought for unwanted services. Such a reading of the statute is, we submit, contrary to both the letter and the spirit of the Act. Money used to pay wages is plainly property. Its character does not change simply because it is paid for work which is real and desired.

2. Nor do we think that it can be argued in this case that the obtaining of the employer's consent to part with such "property" was not "induced by wrongful use of actual or threatened force, violence, or fear * * *," within the meaning of the statutory definition of "extortion" (18 U.S.C. 1951(b)(2)). As we earlier stated, the allegations in the indictment, which must be accepted as admitted for present purposes, specified as acts of violence the shooting and sabotage of transformers and the blowing up of a transformer substation (App. C *infra,* pp. 14a–15a). It is difficult to conceive of acts more plainly fitting within the concept of extortionate force.

Such action is significantly different from the conduct which the Ninth Circuit recently concluded was not covered by the Hobbs Act in *United States* v. *Caldes and Lowery,* C.A. 9, No. 71–2261, decided February 10, 1972. *Caldes and Lowery* involved a claim

of extortion in connection with collective bargaining negotiations between the Laundry and Drycleaning International Union, Local 369, and Mission Linen Supply Company. On two separate occasions, members of the union were seen throwing a vial of green dye into a laundry hamper owned by the company. Following a conviction under the Hobbs Act, the court of appeals reversed (App. D. *infra,* pp. 17a–26a). While it indicated in dictum—in our view erroneously—that the term "property" applied in this context only to wages demanded for unwanted services, the court did not rest its decision on this ground. Rather it concluded that the dye-throwing episodes were no more than mere "* * * byplay while trying to gain larger wages or better working hours and conditions * * *" (App. D, *infra,* p. 23a). Characterizing the acts as "mischievous misconduct," the Ninth Circuit held that Congress did not intend "acts of violence which are the by-product of frustration engendered by a prolonged, bona fide collective bargaining negotiation to be 'extortion' within the meaning of the Act" (App. D, *infra,* p. 26a).

Whether or not *Caldes and Lowery* is correct on its facts, a different result is required in the present case. Here, on three separate occasions appellees, "using a high powered rifle, fired into a transformer substation, owned by Gulf States Utilities Company * * *" (App. C, *infra,* pp. 14a–15a). On another occasion, they "went to a substation owned by Gulf States Utilities Company

* * * [and] drained the oil from a transformer located thereon" (*ibid.*). And, on still another occasion they "blew up a transformer substation owned by Gulf States Utilities Company * * * using twelve sticks of dynamite" (*ibid.*). Such action cannot be labelled "mischievous misconduct."

To be sure, as pointed out by the Ninth Circuit in *Caldes and Lowery* (App. D, *infra*, p. 23a), "often in legitimate labor disputes, tempers grow short, blows are struck on the picket line, and minor but intentional damage is done to the property of the employer." Perhaps in such circumstances, isolated acts of violence "do not partake of the nature of extortion" (*United States* v. *Local 807, supra,* 315 U.S. at 523), since there is no accompanying intent to coerce the employer to part with his property. That question is not presented by the dismissal of the indictment in the instant case, however; for here the conduct cannot be lightly dismissed as merely "the by-product of frustration engendered by a prolonged, bona fide collective bargaining negotiation * * *" (*United States* v. *Caldes and Lowery, supra;* App. D, *infra,* p. 26a).[3]

It is, instead, clearly the type of conduct Congress intended to reach by the phrase, "wrongful use of actual or threatened force, violence, or fear * * * (18 U.S.C. 1951(b)(2)).

[3] It could be raised as a defense at trial that the acts in question were not intended to coerce the employer—although that would seem highly unlikely if the overt acts alleged in fact occurred.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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MARCH 1972.

APPENDIX A

United States District Court, Eastern District of Louisiana, Baton Rouge Division

Criminal—No. 1918

UNITED STATES OF AMERICA

versus

TRAVIS PAUL EMNONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD

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WEST, Chief Judge:

Defendants have been indicted for alleged violations of the Hobbs Act, 18 U.S.C.A. § 1951. They have moved to dismiss the indictment on the ground that the acts alleged therein do not constitute a federal offense under that act.

Briefly stated, three of the defendants were members of the International Brotherhood of Electrical Workers Union, Local 390, and one was a member of Local 2286 of the same union. The indictment charges them with conspiring to obstruct, delay, and affect commerce by extortion in violation of the Hobbs Act. The indictment particularly charges that:

> "9. It was a part of said conspiracy that the defendants and the co-conspirators would obtain the property of the Gulf States Utilities Company in the form of wages and other things of value with the consent of the Gulf States Utilities Company, its officers and agents, such consent to be induced by the wrongful use of actual force, violence and fear of economic injury by said defendants and co-conspirators in that defendants and the co-conspirators did commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company in order to force said Company to agree to a contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits."

The indictment then charges the defendants with certain overt acts designed to cause the malfunctioning of transformers and to damage other property belonging to Gulf States Utilities Company. The defendants, in support of their motion to dismiss the indictment, take the position that the Hobbs Act, which makes it a federal crime to obstruct, delay, or affect interstate commerce by robbery or extortion, simply does not include acts of violence which might occur while em-

ployees are in the process of picketing an employer in furtherance of some lawful labor objective such as securing higher wages for persons employed by the employer pursuant to a collective bargaining agreement. The defendants would distinguish this type of violence from that which is designed to extract from an employer by violence or threats of violence, money or property for which nothing is given in return, and to which the extorter is not entitled, such as wages for unnecessary and unwanted employees. The defendants argue that the Hobbs Act has never been held to include, and was never intended to include, activities, even though unlawful under State law, which have for their purpose the securing of higher wages for legitimate employees who are parties to a lawful collective bargaining agreement.

The Government, on the other hand, would interpret the Hobbs Act much more broadly. Their interpretation would include in the definition of "property" (1) higher wages sought by collective bargaining, and (2) the company's "right to negotiate" the wage questions without unlawful interference.

While there is, as far as this Court can determine, no definitive jurisprudential answer to this dispute, and while there is, in the legislative background of the Hobbs Act, inferences at least to support both sides, this Court, nevertheless, concludes that the Hobbs Act was not intended by the Congress to have the broad application for which the Government contends. This is not to say that there could not be cases in which violence or threats of violence which occur during labor disputes could be prosecuted under the Hobbs Act. It is to say, though, that under the circumstances of this case, the indictment does not charge an offense punishable under the Hobbs Act. The caveat contained in *Morissette* v. *United States*, 342 U.S. 246, 72 S. Ct. 240, 1952, is apropos the present situation:

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"The spirit of the doctrine which denies to the federal judiciary power to create crimes forthrightly admonishes that we should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute."

The pertinent parts of the Hobbs Act under which defendants were indicted, read as follows:

"(a) Whoever in any way or degree obstructs, delays, or affects commerce, or the movement of any article or commodity in commerce, by robbery or extortion or attempts to conspire so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined * * *

(b) As used in this section * * *

"(1) * * *

"(2) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right." 18 U.S.C.A. § 1951.

Section (b)(3), then, in effect, defines "commerce" to mean interstate commerce.

In the case before us, the defendants were union members who were on strike against their employer, Gulf States Utilities Company. The main purpose of the strike was to secure higher wages for Gulf States employees. In the course of the strike, violence apparently erupted. It is alleged that the defendants either individually or in conspiracy, one with the other, caused damage to certain transformers and other property of Gulf States Utilities Company by firing into said property with high powered rifles or by draining oil out of certain transformers for the purpose of causing them to malfunction. There is no sug-

gestion that the strike itself was illegal, nor is there any suggestion that the object of the strike, i.e., to secure higher wages from Gulf State Utilities Company was an illegal objective. The only questiou presented is whether or not the acts with which defendants are charged constituted "extortion" as contemplated by the Hobbs Act. We think they do not. The Hobbs Act grew out of the case of *United States* v. *Local 807*, etc., 315 U.S. 521, 62 S.Ct. 642 (1942), which involved a prosecution brought pursuant to the Anti-Racketeering Act of June 18, 1934, 18 U.S.C.A. § 420(a). That statute made it a crime when:

> "Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce, or any article or Commodity moving or about to move in trade or commerce— (a) obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable consideration, or the purchase or rental of property or protective services, *not including, however, the payment of wages by a bona-fide employer to a bonafide employee:* * * *" (Emphasis added.)

The question involved was whether or not the *exemption* contained in the statute applied only to one who had attained the status of a bona fide employee prior to the time of the alleged violent acts aimed at seeking payment of wages, or whether the exemption also applied to one seeking to become a bona fide employee at the time the acts complained of were committed. The United States Supreme Court held that the latter category was also included within the exemption on the ground that these activities formed a part of regular activities of labor unions, and that the Congress did not intend to impair the ordinary, lawful activities of unions, one of which was to seek work for its members as well as to seek more favorable wages for

people already employed. Shortly after this decision, the Hobbs Act was introduced as H.R. 6872 of the 77th Congress, 2d Session. In its final form the pertinent provisions of that Act read as hereinbefore set forth. It will be noted that in the language of the Hobbs Act, the exclusion pertaining to wages found in the Anti-Racketeering Act was omitted. But it is further noted that instead of making it a crime to use threats or force, etc., in order to obtain "the payment of money or other valuable consideration," the Hobbs Act used what appears to be more restrictive language and made it a crime to "obstruct, delay or affect interstate commerce" by "robbery or extortion." Hence, under the Hobbs Act, in order to constitute a crime, one must obstruct, delay, or affect interstate commerce or attempt or conspire to do so, by "robbery or extortion," whether or not physical violence, or threats of physical violence to persons or property is used. While at first blush it might appear that by passage of the Hobbs Act Congress intended to broaden the prior act by eliminating the exclusion pertaining to wages, a closer look leads to the conclusion that even though the wage exemption was eliminated, the actual scope of the crime was narrowed in other respects. Under the Hobbs Act, in order to constitute a federal offense, the defendant must be shown to have resorted to "robbery or extortion" to accomplish his design. In his testimony before the House Sub-Committee considering his bill, Congressman Hobbs explained it this way:

> "* * * Here, the prime purpose is not to punish a criminal for his crime against State law, but rather to punish interference with interstate commerce by robbery or extortion. This bill would invoke the aid of the federal authorities to prevent the commission of these crimes and to protect interstate commerce.

> "In the second place, I wish to call your attention to the fact that the elements of the crimes discussed by this bill are essentially the same as the elements of robbery or extortion. The only added element is interference with interstate commerce." Hearings before Sub-Committee No. 3 of House Committee on the Judiciary, 77th Congress, 2d Session, pp. 426–427.

Hence, "robbery" or "extortion" were made essential elements of the crime, and "extortion" was defined in the statute as:

> "The obtaining of property from another with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C.A. § 1951(b)(2).

Since we are, of course, bound by this express definition of extortion, we thus narrow the issue here to whether or not these defendants have, in fact, been charged with the "obtaining of property from another" in violation of the Act. The indictment charges that the defendants did, and conspired to do the things proscribed by the Act "by extortion, as that term is defined in Section 1951 of Title 13, United States Code, * * *." It then charges generally that the the "property" which defendants extorted was "in the form of wages and other things of value with the consent of Gulf States Utilities Company * * * such consent to be induced by the wrongful use of actual force, violence and fear of economic injury * * *." It then elaborates a bit by saying not that wages or other property was obtained, but simply that unlawful violence or threats of violence was used "in order to force said company to agree to a contract with Local 2286 of the International Brotherhood of Electrical Workers calling for higher wages and other monetary benefits." The remainder of the indictment simply enumerates specific acts of violence allegedly

perpetrated by defendants in furtherance of their conspiracy to extort.

In its brief in opposition to defendants' motion to dismiss the indictment, the Government says that:

> "Generally the 'property' is the higher wages which were to be obtained from Gulf States Utilities Company as a result of the acts of violence and destruction which were perpetrated. Additionally, the Government contends that the 'property' obtained from Gulf States Utilities Company was its *right* to negotiate employment contracts and to conduct business in an open market without illegal disruption and interference with commerce associated therewith."

We cannot conclude, in this case, that these things constituted either the "property" or the "extortion" contemplated by the Hobbs Act. We find no case where a court has gone so far as to hold the type of activity involved here to be a violation of the Hobbs Act. If the wages sought by violent acts are wages to be paid for unneeded or unwanted services, or for no services at all, there is good authority for the conclusion that such would constitute the extortion prohibited by the Act. Thus, in *United States* v. *Kemble,* 198 F.2d 889, cert, den. 344 U.S. 893 (1953), the Court said:

> "In these circumstances, the conclusion seems inescapable that Congress intended that the language used in the 1946 Statutes be broad enough to include, in proper cases, the forced payment of wages. We say 'in proper cases' advisedly. For it is not necessary that we here consider the great variety of circumstances in which coercion may be involved in the payment of wages. We need not consider the normal demand for wages as compensation for services desired by or valuable to the employer. It is enough for this case, and all we decide, that

> payment of money for imposed, unwanted and superfluous services such as the evidence shows Kemble attempted to enforce here by violent obstruction of commerce is within the language and intendment of the Statute."

But as noted, the Court did not conclude that in all cases where coercion was used in connection with the demand for wages a federal offense would be involved. And again, in *United States* v. *Sweeney,* 262 F.2d 272 (CA 3–1959), the Court, recognizing that all acts of violence in connection with wage demands may not constitute a violation of federal law said:

> "We need not decide in this case how far concerted employee activity through a union, accompanied by violence or threats thereof, is exempted from the Act. The reason we do not need to meet this question is that here we do not find evidence in Sweeney's conduct of union activity. The conference at the Pittsburgh hotel, above described, was conducted by representatives of the union and representatives of the employer. An agreement was reached. There was, so far as we know, no violence or threats of violence at that amicable meeting. The activities of Sweeney seem to have been self-prompted according to the testimony. He ignored the agreement reached and forced another one by violence on the employer."

In order for there to have been a violation of the Hobbs Act here we would have to find that the defendants obtained, or attempted to obtain, or conspired to obtain "property" from Gulf States Utilities Company, with its consent, but by use of actual or threatened force or violence. It is the opinion of this Court that neither the wages of bona-fide employees nor the "right to negotiate employment contracts—without illegal disruption" constitute "property" as contemplated by the Hobbs Act. The union had a right to disrupt the business of the employer by lawfully striking for higher wages. Acts of violence occurring dur-

ing a lawful strike and resulting in damage to persons or property are undoubtedly punishable under State law. To punish persons for such acts of violence was not the purpose of the Hobbs Act. As stated by Congressman Hobbs:

> "* * * Here, the prime purpose is not to punish a criminal for his crime against state law, but rather to punish interference with interstate commerce by robbery or extortion."

The acts of violence with which these defendants are charged are not approved or condoned, and it would be a miscarriage of justice if State prosecution did not follow in their wake. But these acts simply did not constitute the "obtaining of property from another" that is contemplated by the Hobbs Act.

For these reasons the defendants' motion to dismiss this indictment will be granted, and a judgment and order will be entered accordingly.

Baton Rouge, Louisiana, December 16, 1971.

Original Signed: E. GORDON WEST,
United States District Judge.

APPENDIX B

United States District Court for the Eastern District of Louisiana, Baton Rouge Division

Criminal—No. 1918

UNITED STATES OF AMERICA

versus

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD

JUDGMENT AND ORDER

This matter came before the Court on a motion to dismiss by the defendants, and the issues having been heard and the Court having duly rendered a decision for written reasons assigned and filed herein,

IT IS ORDERED AND ADJUDGED that the indictment in the captioned matter charging Travis Paul Enmons, Jackie J. Bando, Ed Wayne Barton, and Milton Ray Woodward with violations of the Hobbs Act, 18 USCS 1951, be and it is hereby, DISMISSED.

Baton Rouge, Louisiana, January 6, 1972.

E. GORDON WEST,

United States District Judge.

APPENDIX C

In the United States District Court for the Eastern District of Lousiana, Baton Rouge Division

Criminal Docket No. 1918

VIO: Title 18 USC 1951; Title 18 USC 2

UNITED STATES OF AMERICA

versus

TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD

INDICTMENT FOR VIOLATION OF HOBBS ACT

The Grand Jury charges that:

COUNT I

1. At all times herein mentioned, Gulf States Utilities Company, a Texas corporation, was a public utilities company, operating in the states of Louisiana and Texas. It was the principal supplier of electrical energy to the area comprising the Baton Rouge Division of the Eastern District of Louisiana, and all of its electrical facilities in said vicinity were connected to and part of an interstate electrical network between the states of Texas, Louisiana, and Mississippi. Further, articles and materials necessary for the construction and maintenance of the facilities of the Gulf States Utilities Company move in interstate commerce.

2. At all times herein mentioned, the International Brotherhood of Electrical Workers, Local Union 390,

was a Labor Union which represented employees who worked for the independent contractors employed by the Gulf States Utilities Company.

3. At all times herein mentioned, the International Brotherhood of Electrical Workers, Local Union 2286, was a Labor Union which represented the employees of the Gulf States Utilities Company.

4. TRAVIS PAUL ENMONS, JACKIE J. BENDO, ED WAYNE BARTON, and MILTON RAY WOODWARD, are named defendants herein.

5. JOHN E. LAMBERT and WILLIAM THORNHILL are named herein as co-conspirators, but not defendants.

6. At all times herein mentioned, the defendants TRAVIS PAUL ENMONS, JACKIE J. BENDO, MILTON RAY WOODWARD, and co-conspirators WILLIAM THORNHILL and JOHN E. LAMBERT were members of International Brotherhood of Electrical Workers, Local 390. TRAVIS PAUL ENMONS was the business manager for said local and JACKIE J. BENDO was the assistant business manager.

7. At all times herein mentioned, defendant ED WAYNE BARTON was a member of and business manager for International Brotherhood of Electrical Workers, Local 2286.

8. Commencing on or about October 30, 1969, and continuing to on or about June 2, 1970, in the Baton Rouge Division of the Eastern District of Louisiana, and within the jurisdiction of this court and elsewhere, defendants did knowingly, willfully and unlawfully combine, conspire and agree together and with others, including the named co-conspirators, WILLIAM THORNHILL and JOHN E. LAMBERT, to obstruct, delay, and affect commerce, as defined in Section 1951 of Title 18, United States

Code, and the movement in commerce of electrical energy and other articles and commodities by extortion, as that term is defined in Section 1951 of Title 18, United States Code, and to commit physical violence to property in furtherance of said plan to obstruct, delay and affect commerce.

9. It was a part of said conspiracy that the dedefendants and the co-conspirators would obtain the property of the Gulf States Utilities Company in the form of wages and other things of value with the consent of the Gulf States Utilities Company, its officers and agents, such consent to be induced by the wrongful use of actual force, violence and fear of economic injury by said defendants and co-conspirators, in that defendants and the co-conspirators did commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company in order to force said Company to agree to a contract with Local 2286 of the Internatinal Brotherhood of Electrical Workers calling for higher wages and other monetary benefits.

10. It was further a part of said conspiracy that defendants and the co-conspirators did, in fact, commit acts of physical violence and destruction against property owned by the Gulf States Utilities Company, to-wit: transformers, substations and other property used to transmit electrical energy between the States of Texas, Louisiana, and Mississippi.

11. The following specific acts of violence and destruction were perpetrated in furtherance of the aforedescribed conspiracy:

A. On October 30, 1969, defendant JACKIE J. BENDO, together with co-conspirator JOHN E. LAMBERT, using a high powered rifle, fired into

a transformer substation, owned by Gulf States Utilities Company, known as the Alsen Substation, with the intent to cause said equipment to malfunction.

B. On or about November 10, 1969, defendant, MILTON RAY WOODWARD, together with co-conspirator JOHN E. LAMBERT, using high powered rifles, fired into a transformer substation powered by Gulf States Utilities Company, known as the Lindsey Substation, with the intent to cause said equipment to malfunction.

C. On or about December 9, 1969, defendant, MILTON RAY WOODWARD, together with co-conspirators JOHN E. LAMBERT and WILLIAM THORNHILL, went to a substation owned by Gulf States Utilities Company, known as the Port Hudson Bulk Station where they drained the oil from the transformers located thereon, with the intent to cause said equipment to malfunction.

D. On or about December 9, 1969, defendant MILTON RAY WOODWARD, together with co-conspirators JOHN E. LAMBERT and WILLIAM THORNHILL, went to a transformer substation known as the Lindsey Substation owned by Gulf States Utilities Company, and fired into the said substation with a high powered rifle for the purpose of causing said transformer to malfunction.

E. On or about June 2, 1970, co-conspirators WILLIAM THORNHILL and JOHN E. LAMBERT at the instructions of the defendant, JACKIE J. BENDO, blew up a transformer substation owned by the Gulf States Utilities Company, known as the Sandy Creek Substation, using twelve sticks of dynamite.

All of which acts by defendants were in violation of Title 18, United States Code, Sections 1951 and 2.

A True Bill:

/s/ RALPH E. JONES,
Foreman.

GERALD J. GALLINGHOUSE,
United States Attorney.

JULIAN R. MURRAY, JR.,
Assistant United States Attorney.

JOSEPH R. MCMAHON, JR.,
Assistant United States Attorney.

APPENDIX D

In the United States Court of Appeals for the Ninth Circuit

No. 71-2261

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

THEODORE CALDES AND WELLAINE M. LOWERY, DEFENDANTS-APPELLANTS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Before: JERTBERG and WRIGHT, Circuit Judges, and WILLIAMS, District Judge.[1]

WILLIAMS, District Judge:

Defendants were indicted in the District Court of Arizona and charged in a two count indictment with violating the Hobbs Act, 18 USC § 1951. They appealed after being convicted before a jury of both counts. Caldes was a field representative of AFL-CIO and Lowery was president of the Laundry and Drycleaning International Union, Local 369. The Laundry Workers Union and Mission Linen Supply Company (Mission) were involved in protracted negotiations for a collective bargaining agreement and these efforts were still in progress at the times of the incidents which were the basis of this indictment.

Mission is a corporation which engages in interstate commerce and is in the business of renting linen and

[1] Honorable David W. Williams, United States District Judge for the Central District of California, sitting by designation.

other supplies to hospitals, hotels and other institutions. Jurisdiction is found in 28 USC §§ 1291 and 1294.

The Hobbs Act provides in pertinent part that:

> "(a) Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in interstate commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property and furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000.00 or imprisoned not more than 20 years, or both.
>
> "(b) As used in this section
>
> (1) * * *
>
> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use or actual or threatened force, violence or fear or under color of official right." 18 USC § 1951.

Appellants were accused of two incidents. On October 24, 1969, they followed one Ramon Herrera, a driver for Mission, whose job was to deliver linen to Mission's customers. When Herrera stopped for a red light he saw Lowery throw an object into his truck from a car driven by Caldes. Herrera returned the truck to the company's plant and found a green substance which appeared to be a dye, along with broken glass on the floor of the truck. A malicious mischief report was filed with local police but no charges were instituted in state court. The FBI began surveillance of the appellants and on December 3, 1969, witnessed the events that formed the accusation of count 2. That afternoon FBI agents saw Caldes and Lowery drive to the Georgian Court Nursing Home, a customer of Mission. One agent testified that Caldes ran from the car toward the nursing home and then quickly returned to the car and drove away. The

agent found a laundry hamper sitting in a breezeway directly in line with Caldes' path of travel full of linen discolored by a green dye. A glass jar containing an identical substance was later found in Caldes' car along with a list of Mission's customers and the numbers of its trucks.

The damage done in each instance was minimal and appellants seem not to seriously dispute their involvement in the mischief. They raised two points on appeal:

(1) did the Government establish beyond a reasonable doubt that defendants acted in furtherance of a plan to pressure the company into a collective bargaining agreement through the wrongful use of force, and

(2) does the Hobbs Act reach violence to property as part of a plan to extort a thing of value in the form of a collective bargaining agreement covering wages, hours and working conditions of *wanted* employees?

The first can be disposed of quickly. There was a labor dispute which had gone on for almost two years involving Mission; defendants were labor leaders who were seen on two instances committing acts of vandalism against Mission's property of the type that could logically be inferred as "getting a message" to the company that if it did not settle, the level of violence might escalate. We are obliged to look at the evidence in the light most favorable to the Government in this criminal appeal, *Glasser* v. *United States,* 315 U.S. 60 (1942) and *United States* v. *Nelson,* 419 F.2d 1237 (9th Cir., 1969), and in a real sense there was ample evidence from which the jury could logically conclude that the violence was intended to pressure the company into an agreement.

The second claim presents more difficulty, and we conclude we must reverse upon the ground that the Act was not intended to reach low level violence committed in connection with bona fide labor disputes

between employers and employees. In this, we try to carefully distinguish this case from one in which acts of extortion are committed to compel an employer to take on unwanted workers (featherbedding) or to pay for work which the worker has no intention of performing. Our research has not led to the discovery of another federal appellate court that has addressed itself to this issue, but a recent district court case seems not inconsistent with our conclusions.[2]

The Hobbs Act was enacted in 1946 to correct what certain members of Congress felt to be an error created by the holding in *United States* v. *Local 807*, etc., 315 U.S. 521 (1942). Congressman Hobbs first introduced his bill two weeks after the filing of the opinion in *Local 807*. That case construed portions of the Anti-rackteering Act of 1934, known as the Copeland Act, 48 Stat. 979 carried forward in 18 USC § 420–a. Local 807 of Teamsters were truck drivers and helpers in New York City. They resented out-of-state drivers coming into New York to make deliveries of goods brought in from other shipping points and they stationed themselves at the entry points connecting New York City to bordering states and stopped trucks seeking to deliver merchandise to New York consignees and by threat and actual use of force and violence ordered the drivers to let a Local 807 man deliver the load from them into the city or pay the union equivalent of a day's wages. If the foreign driver paid the local member, his truck would be taken into the city, unloaded, reloaded and returned to him for the return trip. Often, after he paid the tribute, the foreign driver was compelled to drive his truck into New York himself as the local member would refuse to perform the service even when re-requested to so do.

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[2] *United States* v. *Emmon et al.*, 40 U.S.L.W. 2395 (E.D.La. Dec. 16, 1971), *Petition for cert. filed*, ——— U.S.L.W. ———.

Section 2(a) of the Anti-racketeering Act denounced the person who "in connection with * * * any act * * * affecting trade or commerce—

(a) obtains or attempts to obtain, by the use or attempt to use or threat to use force, violence or coercion, the payment of money or other valuable consideration, or the purchase or rental of property or protective services *not including, however, the payment of wages by a bona fide employer to a bona fide employee.*" (emphasis added).

Local 807 held that persons who offered to perform services for another and who demanded and received union wages for such offer were exempted by Section 2(a) of the Act from criminal liability even though their proffered services were rejected. The Court held that the determining criterion was not whether the victim paid the money with the intent to buy protection but whether the money was demanded without the intention of performing any service. Then the Court concluded that even when it is known that an employer does not need additional workers, violence and threats accompanying a sincere offer to work is not extortion.

Congressional reaction to the *Local 807* decision was immediate and highly vocal. Many members saw the case as giving license to unions to use violence to exact wages as long as the laborer was willing to work. The legislative history of the Hobbs Act shows that the deliberate purpose of Congress was to eliminate Section 2(a) of the Anti-racketeering Act on which *Local 807* turned, so as "to prevent the rendition of that sort of decision by any court in the future * * *." remarks of Congressman Sumners, 91 Cong. Rec. 11, 909 (H.R. Dec. 12, 1945).

By eliminating Section 2(a) however, Congress did not intend to eliminate traditional labor or union activity, albeit militant, which has as its object legitimate

ends. The exclusion was not meant to provide impunity to the terroristic and extortionate activities of union members, but to protect union activity directed toward legitimate labor goals even when militantly pursued. It seems that the *Local 807* decision went beyond the holding it was called upon to reach and beyond the intent of Congress, in condoning a union's engaging in violence as a means of getting wages so long as the union member was willing to work. This could be construed as permitting the use of robbery and extortion to bring about the hiring of unwanted, unneeded employees.

Conduct of this type was judicially frowned upon in *United States* v. *Kemble,* 198 F. 2d 889 (3rd Cir.), *cert. den.* 344 U.S. 893 (1952). The defendant, a member of a New Jersey Truck Drivers Union, was convicted of employing actual and threatened violence against a driver not a member of defendant's local who had brought a load of merchandise by truck to New Jersey from another state. The defendant had sought to make the out-of-state driver hire a local member to unload his truck and pay a day's wages to him at union scale. The Court emphasized that the defendant was using extortion to bring about the hiring of an unwanted employee and held this to be a violation of 18 U.S.C. § 1951. Judge Hastie stated that he felt the Hobbs Act was broad enough to include the forced payment of wages where the money was for "imposed, unwanted and superfluous services such as the evidence shows *Kemble* attempted to enforce here by violent obstruction of commerce * * *" The *Kemble* Court expressly declined to consider whether the Act reached the "normal demand for wages as compensation for services desired by or valuable to the employer." (Page 892).

In *United States* v. *Green,* 350 U.S. 415, 419, the Court held that the use of threats of violence or

violence, either by union members or others, as a means of exacting wages violates the Hobbs Act. *Green* differs from the case at bar in that it dealt with extortion from an employer in the form of wages to be paid employees for imposed, unwanted and superfluous or fictitious services. Following *Green* a series of lower court cases held that extortion occurred when a union member tried to foist himself or another union member on an employer by threats of force and violence. See, *e.g., Callanan* v. *United States,* 223 F. 2d 171 (8th Cir., 1955), *cert. den.* 350 U.S. S. 861 *reh. den.* 350 U.S. 926 (1955); *United States* v. *Sweeney,* 262 F. 2d 272 (3rd Cir. 1959).

Our case involves the issue whether violence employed during the course of a valid, bona fide collective bargaining negotiation can be viewed as extortion within the meaning of the Hobbs Act. We have had urged upon us the argument that often in legitimate labor disputes, tempers grow short, blows are struck on the picket line, and minor but intentional damage is done to the property of the employer. We are also mindful that the damage done Mission's linen in these two instances was trivial when judged in monetary terms.

We turn to the question—did Congress intend to impose a felony conviction with severe penalties upon the union member caught in such byplay while trying to gain larger wages or better working hours and conditions for wanted employees? Certainly this conduct would constitute an offense against the state and would properly be described as an unfair labor practice.

The use of the term "extortion" in the Hobbs Act is based on the definition given the term "extortion" in the New York Penal Code. There the word is defined as ". . . the obtaining of property from another . . . induced by wrongful use of force or

fear . . .". This statute was interpreted in *People* v. *Diaguardi*, 8 N.Y. 2d 260 (1960). The Court of Appeals construed the term "force" as used to define extortion, as including coercion, physical violence, destruction of property and economic loss other than that induced by a lawful strike. In *Diaguardi*, the defendant received payments from the victim company which were, in effect, to buy an end to peaceful organizational picketing. The Court stated:

> "The picketing here * * * may have been perfectly lawful in its inception (assuming it was part of a bona fide organizational effort 'and may have remained so—despite its potentially ruinous effect on the employer's business—so long as it was employed to accomplish the legitimate labor or objectives or organization. Its entire character changed from legality to criminality, however, when it was used as a pressure device to exact the payment of money as a condition of its cessation.'"

Thus the New York Court held that the payment out of fear of economic loss became extortion when the aim and objective of the strike was not merely to secure more favorable terms for the laborer but to exact money as a condition of further economic survival. This principle was followed in *United States* v. *Cramer*, 355 F. 2d 691 (7th Cir. 1966) where a union leader threatened the employer with labor trouble if he was not paid a sum of money, and in *United States* v. *Hyde*, 448 F. 2d 815 (5th Cir. 1971) where the state attorney general and his aide were convicted of a Hobbs Act violation for threatening life insurance and loan companies with state action which could lead to the closing of their businesses unless payments were made to the defendant. The Court there held that the "wrongful use of an official right may be a basis for extortion" page 833.

We pass to the question at hand, whether violence

which is the by-product of the frustration and emotionalism engendered by a prolonged collective bargaining negotiation can be considered extortion as that term is used in the Hobbs Act. A fundamental rule of statutory construction is that criminal statutes must be strictly construed. *United States* v. *Resnick*, 299 U.S. 207, 209 (1936). Last term the Supreme Court said that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." *Rewis* v. *United States*, 401 U.S. 808, 812 (1971).

Labor unions must be able to actively and vigorously pursue the interest of their members at all times, provided their activity is directed toward legitimate ends. The expansive interpretation of "extortion" used in the Hobbs Act as urged by the Government would make criminal the activities of many militant labor organizations. Under the Government's view, a labor union and its members would be guilty of extortion under Section 1951 if they strike for higher wages in violation of their collective bargaining agreement, because an "illegal" or "wrongful" strike to obtain higher wages constitutes a "wrongful" use of force to obtain the property of another. Spontaneous and sporadic fighting on the picket lines could also be condemned as the use of wrongful force and as extortion if this view was allowed to prevail. This type of action, including the use of violence during a strike, was the subject of congressional attention the year following enactment of the Hobbs Act. The Taft-Hartley Act contained specific provisions which condemned this action as unfair labor practices. See, 29 U.S.C. § 158(b)(2)(A). It is significant that during congressional deliberations on the bill no congressman expressed an opinion that the Hobbs Act of the preceding year covered union violence while a strike was in progress.

If the Hobbs Act was construed to cover acts of violence during the negotiations for a legitimate labor goal we see a further danger that it would permit a union member to be found guilty of extortion for mischievous misconduct even though he did not possess the requisite felonious intent to deprive another of his property. It does not appear that Congress intended for acts of violence which are the by-product of frustration engendered by a prolonged, bona fide collective bargaining negotiation to be "extortion" within the meaning of the Act. Indeed, in *Local 807* the Government admitted in its brief that "Those who used coercion to secure genuine employment are engaged in a legitimate labor objective; their activities, although perhaps constituting breaches of the peace do not partake of the nature of extortion." *United States* v. *Local 807* at 522–523.

Finally, it appears to us that acts of vandalism of the type committed by these appellants would be more properly and suitably prosecuted in the state courts and it is doubtful if Congress intended by Section 1951 to elevate this type of conduct to the level of the federal court. *See United States* v. *Bass*, ——— U.S. ———, 30 L.Ed. 488 (1971).

We reverse and order the indictment dismissed.

U.S. GOVERNMENT PRINTING OFFICE: 1972